

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-5589

May 3, 1990

Ms. D--- T---, Partner
P--- S---'s C--- Restaurant
P.O. Box XXX
--- ---, CA XXXXX

Re: SR --- XX-XXXXXX

Dear Ms. T---:

This is in response to your letter of March 16, 1990. You have requested our opinion regarding the correct application of tax to sales by your food shop located at XXX Y--- Street in Nevada City.

As we understand, you operate a Restaurant located at XXX B--- Street in Nevada City and the food shop located around the corner. The only connection between the two is a door into the back kitchen area. You wish to know whether these two locations will be treated as one location for purposes of determining whether you are subject to the "80-80 Rule."

Briefly stated, the "80-80 Rule" is applied if:

1. Over 80 percent of the seller's gross receipts are from the sales of food products; and
2. Over 80 percent of the seller's retail sales of food products are taxable either as food products sold as meals; food products furnished, prepared, or served for consumption at facilities provided by the retailer or at an establishment which is defined as a 'drive-in'; or food products sold as hot prepared food.

A retailer in a type of operation which generally exceeds the percentages of the '80-80 Rule' (such as a fast food restaurant) should collect tax on all sales of food products sold in a form suitable for consumption on the seller's premises.

We are of the opinion that your two establishments should not be treated together for purposes of determining whether the '80-80 Rule' is required to be applied. Our opinion is based on the assumption that the common kitchen area is not open to the public for access to both

locations. Because of our conclusion, we need not address the question of what percentage of your sales are taxable.

We are enclosing a copy of the Board's Tax Tip Pamphlet "The Dining and Beverage Industry" for your future reference. If you have further questions concerning this matter, please write this office again.

Very truly yours,

Mary C. Armstrong
Senior Tax Counsel

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